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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,002	04/14/2000	Paul C. Hassler	7330*1	7995

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EXAMINER

FLORIO, KRISTINE MARIE

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/549,002

Applicant(s)

HASSLER, PAUL C.

Examiner

Kristine M. Florio

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Amendment

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner (US Patent 5,308,188) in view of Grosh (US Patent 3,974,599) and Wiedrich (5,956,905).

Shaftner discloses a system for protecting a roadway structure from damage having a resilient, replaceable collar having a body with upper and lower surfaces (10, figure 1). An opening is provided through the center and sized to accommodate the outer periphery of the roadway structure (12, figure 1). The side walls of the collar are sloped and extend downward from the upper surface of the body to the lower surface of the body (11, figure 1). The upper surface of the body is in substantially planar alignment with the upper surface of the roadway structure (figures 2 and 3).

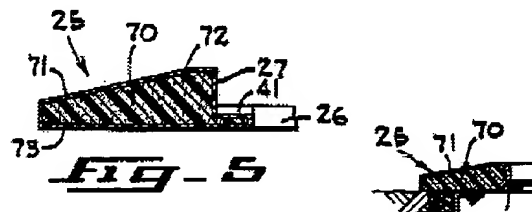
At least one resilient riser is provided between the lower surface of the collar body and an upper surface of the roadway pavement. The resilient riser has a thickness such that the collar body and resilient riser together have a height substantially equal to the distance the roadway structure extends above the roadway pavement (column 3, lines 42-44 and 50-53). The lower surface of the collar body is planar (see figure 2).

Regarding claims 2 and 10, the riser/collar is made from an elastomeric material (column 2, lines 1-3 and column 3, lines 54-57). Regarding claim 3, the specific

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roadway structures it surrounds are utility access holes, such as manhole covers, gas and water utility covers, storm sewer inlets, etc (column 1, lines 9-11). Regarding claims 4 and 5, the roadway pavement is stripped such that the collar is used for placement around an access hole which is temporarily elevated (column 1, lines 9-18). Regarding claim 6, the collar is circular with a central circular opening to snugly engage the access hole. Regarding claim 7, the collar can also be designed to be rectangular in shape with a circular central opening (figure 4). The collar body has a height equal to the distance the roadway structure extends above the roadway pavement (figures 2 and 3). The collars can be stacked one on top of the other to provide for a riser effect such that together they have a height equal to the distance the roadway structure extends above the roadway pavement (column 1, lines 50-52, column 3, lines 39-44).

Shaftner discloses the claimed device except for the upper surface of the collar body being substantially planar. Grosh discloses that it is known in the art to provide an upper surface of a ramp member leading to a roadway structure to be substantially planar (see figure below). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of Shaftner with the planar upper surface of Grosh, in order to allow for a flush fit, and therefore a smooth transition along the top of a grating or manhole cover.



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Regarding the limitation of the upper surface of the riser being planar, Shaftner discloses the claimed device except for the use of risers having planar upper surfaces (14, figure 1) in order to provide a stable/easily stackable base with which to raise the height of the collar body to a desired level. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the riser of Shaftner with the planar upper surface of Wiedrich, in order provide a stable/easily stackable base with which to raise the collar body to a desired level and to make height adjustments.

Response to Arguments

3. Applicant's arguments filed 7/11/03 have been fully considered but they are not persuasive.

Applicant's arguments on page 3 (paragraph 1) of the amendment states that:

The office action admitted that Shaftner fails to disclose "use of risers having planar upper surfaces in order to provide a stable/easily stackable base with which to raise the height of a roadway structure to a desired level." Although Applicant agrees that Shaftner fails to disclose risers having planar upper surfaces, the statement actually misstates the claimed invention, which, Applicant believes, gives rise to the misplaced reliance on Wiedrich.

Examiner has made a typographical error in using the phrase "roadway structure". Examiner contends that the use of Wiedrich remains within reason with the rejection. The rejection, which has been clarified above, should have been written with the term "collar body" in place of the phrase "roadway structure". Therefore, Shaftner fails to disclose the use of risers having planar upper surfaces in order to provide a stable/easily stackable base with which to raise the height of the collar body to a desired level. Examiner is aware that raising the actual roadway structure (in this case a manhole) is not in question. Examiner has merely incorporated the use of Wiedrich to show that elements having horizontal planar surfaces can be used as "risers". It was not